*The Hon'ble Sri Justice C.V.RAMULU

+Writ Petition No.26689 of 1995

%25.02.2005

£ The Management of Bharat Heavy Electricals Ltd.,

Rep. by its General Manager (P&A)
Ramachandrapuram, Hyderabad-500 032

…Petitioner

Vs.

$ 1 Labour Court-II,
Chandravihar Building, M.J.Road,
Hyderabad.
2 R.Narsinga Rao, S/o R.Rajaiah,
H.No.2-2-882, Noorkhan Bazar,
Hyderabad.

… Respondents

!For the petitioner … Mr. S.RAVINDRANATH

^For the Respondent No.1 … GP FOR LABOUR

For the Respondent No.2: … Mr. M. PANDURANGA RAO

<Gist:

>Head Notes:

? Cases Referred

1. 1993(1) LLJ 468

2. 1994(1) LLJ 1076

3. 1994(2) LLJ 1234

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE Mr. JUSTICE C.V.RAMULU**

**WRIT PETITION No.26689 of 1995**

Between:

The Management of Bharat Heavy Electricals Ltd.,

Rep. by its General Manager (P&A)
Ramachandrapuram, Hyderabad-500 032

**..... PETITIONER**

AND

1 Labour Court-II,
Chandravihar Building, M.J.Road,

Hyderabad rep. by Presiding Officer.

2 R.Narsinga Rao, S/o R.Rajaiah,
H.No.2-2-882, Noorkhan Bazar,
Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order, Direction or a Writ one in the nature of 'WRIT OF CERTIORARI' and after calling for records in I.D.No.256/1992 from the first Respondent Labour Court-II and quash the same.

**Counsel for the Petitioner: Mr. S.RAVINDRANATH**

**Counsel for the Respondent No.1: GP FOR LABOUR**

**Counsel for the Respondent No.2: Mr. M. SRIKANTH**

**The Court made the following :**

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**ORAL ORDER:**

This Writ Petition is filed by the Management aggrieved by the Award dated 3-7-1995 in I.D.No.256 of 1992 on the file of the Labour Court-II, Hyderabad, wherein the 2nd respondent workman was directed to be reinstated with continuity of service and attendant benefits, but without any back wages.

It is the case of the petitioner-management that it is a public sector undertaking and the 2nd respondent was working as a Security Guard to ensure the safety and security of the property as well as the personnel of the company. While so, on the night of 29-7-1981, the 2nd respondent along with M. Sharanappa and G. Babaiah, senior Security Guards boarded the third shift incoming bus (Route No.2) at the main check post around 10.00 p.m. and alighted at ‘J’ gate of the factory. At that time, one PGV Naidu, Foreman also alighted from the bus along with his wife Smt P.V.Shanta Kumari. While PGV Naidu had gone towards cycle shed, the 2nd respondent assaulted his wife Smt.Shanta Kumari, closed her mouth with his hands and sought

to snatch away her gold chain from her neck. When she raised cries for help due to her modesty being outraged PGV Naidu turned and rushed towards the 2nd respondent. On seeing this, the 2nd respondent ran away, but was caught by Naidu. At that time, G.Babaiah and M.Sharanappa, Senior Security Guards colluded with the 2nd respondent and led away PGV Naidu towards 'J' Gate of the factory telling him to leave the 2nd respondent as he would be taken later to the Duty Officer by them for making a complaint. This misconduct was enquired into and ultimately the 2nd respondent was dismissed from service. However, since a dispute in I.D.No.23 of 1981 was pending before the Industrial Tribunal, Hyderabad, the petitioner-management filed an application being M.P.No.88 of 1982 under Section 33(2)(b) of the Industrial Disputes Act,1947 (for brevity 'the Act') seeking approval of the dismissal order dated 8-5-1982. The Tribunal, having regard to the rival contentions and after perusal of the enquiry proceedings and report, passed an Order on 6-8-1983 holding that the enquiry was properly conducted and that there was no violation of principles of natural justice. Therefore, by an order dated 19-8-1983 the Tribunal granted approval of the dismissal order passed against the 2nd respondent. Aggrieved by the same, the 2nd respondent approached this Court by way of W.P.No.10903 of 1983, which was dismissed on 20-11-1987 holding that the domestic enquiry conducted was fair and proper. This Judgment was carried in appeal being Writ Appeal No.1751 of 1988, which was also dismissed on 23-1-1989 holding as under:

> "We agree with the learned single Judge. This is not a fit case for interfering with the order of the Tribunal giving approval to the dismissal of writ petitioner by the Management. The proper remedy for the writ petitioner, if he is aggrieved, is to raise an Industrial Dispute, for the approval has been granted on correct principles. The Writ Appeal is consequently dismissed."

However, since this Court in the above writ appeal has held that the remedy for the workman, if he is aggrieved, is to raise an industrial dispute, the 2nd respondent raised a dispute under Section 2-A(2) of the Act before the Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D.No.86 of 1989. The Tribunal, according to the petitioner-management, had again took up the issue of the validity of the domestic enquiry and gave a finding that the domestic enquiry was not properly conducted and is vitiated by an Order dated 22-6-1995. Since the management has

not adduced any evidence, the Tribunal took up the matter for final decision and gave a finding that the enquiry itself was not properly conducted and the charges against the workman were not proved. Apart from the fact that the charges were also not proved in the criminal case and in the absence of any material, the workman is entitled for reinstatement into service with all attendant benefits, but without any back wages. This Award is under challenge in this Writ Petition.

Learned counsel for the petitioner contends that the validity of the enquiry was the subject matter of a decision in M.P.No.88 of 1982 in I.D.No.23 of 1981 and the same was challenged by the 2nd respondent in W.P.No.10903 of 1983, which became final in W.A.No.1751 of 1988; therefore, it was not proper for the Tribunal in taking up this issue again and examining as to the validity of the enquiry conducted by the management while deciding the dispute under Section 2-A(2) of the Act in the present I.D. That amounts to raking up the issue, which attained finality and attracts the doctrine of *res judicata.* Further, while exercising the powers under Section 11-A of the Act, the Tribunal ought not to have directed the Management to reinstate the 2nd respondent-workman into service with continuity of service and other attendant benefits. The misconduct proved against the workman is so serious involving morality of the society; therefore the Tribunal erred in coming to such conclusion.

Heard the learned counsel for the 2nd respondent-workman.

I have given earnest consideration to the submissions made by either side and gone through the entire material on record including the impugned Award.

At the outset, of course, which was not put in issue before any of the Courts, I am of the opinion that this misconduct attributed against the 2nd respondent arose outside the employment and probably the management was not entitled to go into such aspect. Since this question was not raised, there is no necessity of going into it at this stage.

Insofar as the contention of the learned counsel for the petitioner that it was not open for the Labour Court while deciding the present I.D. to rake up the issue of validity of the domestic enquiry is concerned, no doubt, the Labour Court for the purpose of giving approval under Section 33(2)(b) of the Act held that the domestic enquiry conducted was proper, which was not a question that arose for consideration before the Labour Court and of course, the same was approved by a learned single Judge

of this Court. But, nonetheless, while disposing of W.A.No.1751 of 1988, as noted above, a Division Bench of this Court, never curtailed the power of the Labour Court to go into the preliminary issue of validity of the domestic enquiry conducted by the petitioner-management. In fact, the Labour Court gave a preliminary finding holding that the domestic enquiry was not valid and the principles of *res judicata* would not be applicable by an Order dated 22-6-1995 in I.D.No.256 of 1992. The petitioner did not challenge the said order separately nor the management led any evidence before the Labour Court to substantiate the dismissal order passed by it.

In this regard, it is pertinent to refer to the decision of a Division Bench of the Orissa High Court in **MANAGEMENT OF ORISSA R.T.C. LTD. V. M.V. RAO & ANOTHER** in which it was held that an order of approval under Section 33(2)(b) of the Act could not be a bar to the reference and the same has to be decided on its own merits. In **CHOLAN ROADWAYS CORPORATION LIMITED v. INDUSTRIAL TRIBUNAL, MADRAS AND ANOTHER** a learned single Judge of the Madras High Court observed as under:

> "**10...**.....The Tribunal exercising jurisdiction under Sec.33(2)(b) of the Industrial Disputes Act is not sitting as a Court of appeal weighing or reappraising evidence. For the purpose of granting or refusing approval under Section 33(2)(b) of the Act, the Tribunal only examines the findings of the enquiry officer in order to find out whether there is a *prima facie* case or whether the findings of the enquiry officer are perverse. A *prima facie* case is not a case proved to the hilt. If the employer has held a proper enquiry into the alleged misconduct of the employee following the principles of natural justice and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the other ground on which the tribunal can interfere is only when there is no legal evidence at all recorded in the domestic enquiry. In other words, if there was a proper enquiry into the misconduct and no victimization or unfair labour practice is involved, the tribunal has to limit its enquiry under Sec.33(2)(b) only to the extent as to whether a *prima facie* case has been made out or not. It must be remembered that the jurisdiction is only to decide whether the ban imposed on the employer by Sec.33 is to be lifted or maintained by granting or refusing the approval. If the approval is refused by the tribunal, the employer would be precluded from discharging or punishing the workmen. However, if permission or approval is granted, that could not validate the action of discharge or dismissal. **Permission or approval would merely remove the ban, but the validity of the order would still be liable to be decided in a reference at the instance of the workmen under Sec.10 or 2-A of the Act**." (emphasis supplied)

In yet another judgment in **M/S.ECHIJAY IND(P) LTD. V. SHRI M.SHIVUBHA & ORS** a Division Bench of Gujarat High Court held that an inquiry under Section 33(2)(b) of the Act is confined only to the question as to whether a *prima facie* case has been made and permission granted under Section 33(2) would not bar the examination of the question of validity of the order of dismissal under Section 10 of

the Act.

From the above, what can be deduced is that the order passed by the Labour Court under Section 33(2)(b) of the Act granting approval of the termination/dismissal order cannot bar the workman from invoking the provision under Section 2-A(2) or Section 10 of the Act and the Labour Court is not debarred from examining the validity of the order of termination/dismissal in the application under Section 2-A(2) or Section 10 of the Act. The claim petition under Section 2-A(2) of the Act has to be dealt with independently without being influenced by any observations made in any other ancillary proceedings. The order passed under Section 33(2)(b) of the Act cannot operate as *res judicata* while deciding the petition under Section 2-A(2) or Section 10 of the Act.

Under the above circumstances, the Labour Court rightly held that once the enquiry is vitiated, the management has to place material by leading evidence in support of the dismissal order and since no material is placed before it, the charges levelled against the workman must be held to be not proved. It is also curious to note that the Labour Court has given opportunity to the management to prove the charges against the workman, but it was not availed. The Labour Court also took into consideration the fact that the criminal case, which was registered against the workman, ended in acquittal since it was not proved. I am of the opinion that there was no other option left to the Labour Court except to hold that the enquiry was not proved in the absence of any evidence led by the management even after holding that the enquiry conducted by it was invalid, on 22-6-1995. The finding of the Labour Court that the charges were not proved and the workman is entitled for reinstatement into service with continuity of service, but without any back wages does not call for interference at the hands of this court, since the Labour Court has not committed any error apparent on the face of the record.

Learned counsel for the petitioner has drawn attention of the Court to the Security Force Regulations of the Bharat Heavy Electricals Limited, which were framed for conducting enquiry into the misconduct committed by its Security Force and particularly to Regulation 18 and submitted that under the aforesaid Regulations and the executive instructions/rules framed governing disciplinary proceedings against the security personnel, disciplinary proceedings were properly invoked for the purpose of taking action against the 2nd respondent herein, since he outraged the

modesty of a woman and also attempted to snatch away the chain being a security personnel, though he is not on duty at that point of time. I am afraid, I cannot agree with the submissions made by the learned counsel for the petitioner, since the said Regulations do not take care of such a situation, where the crime or offence or misconduct, which arises outside the employment. The Writ Petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

25-2-2005

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SECTION OFFICER

One fair copy to the Hon'ble Sri Justice C.V.Ramulu for His Lordships kind perusal.

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